IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 9TH NOVEMBER 2006 / 18TH KARTHIKA 1928

ST.Rev..No. 409 of 2005()

TA.125/2004 of STAT ADDL.BENCH, KOTTAYAM
.....

REVISION PETITIONER

K.B.SHAJI,
SHAJI OIL MILLS,
THODUPUZHA.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SMT.DEEPSUR D.JAYAN
SRI.K.P.PRADEEP (PAYYANNUR)
SRI.SHANMUGHAM D. JAYAN
SMT.P.K.MAYA DEVI

RESPONDENTS: RESPONDENT

STATE OF KERALA,
REP.BY ITS FINANCE SECRETARY, SECRETARIAT,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 09/11/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M.JOSEPH, JJ.

S.T.Rev. NO.409 OF 2005

Dated this the 9th day of November, 2006

JUDGMENT

Ramachandran Nair,J.

Heard counsel for the petitioner and Government Pleader. The question raised is against rejection of books of accounts and addition of turnover sustained by the Tribunal. Petitioner is an oil mill engaged in crushing of copra and sale of coconut oil and oil cake. Accounts are rejected for the reason that sales covered by three invoices which passed through the checkpost were not accounted by the petitioner. Petitioner's case is that petitioner denied the transactions and the department has not established liability on petitioner by tracing the consignee, the owner or driver of the vehicle, which transported the goods, as provided under Section 30B(4) of the KGST Act. However, on going through Tribunal's order, we find that petitioner did not make any effort to issue summons on the consignee for verifying the genuineness of the transactions. Therefore Tribunal examined copies of bills collected from the checkpost and compared the same with

accounted bills. On comparing two sets of bills, the Tribunal found that hand-writing is similar and both accounted and unaccounted bills were written by the same person. In the circumstances, the Tribunal rightly assumed that prima facie case is proved against the petitioner by establishing that the bills pertain to the petitioner's sales. Petitioner has not adduced any evidence to disprove the transactions. In the circumstances, the rejection of books of accounts and addition in principle is upheld. However, so far as the quantum of addition is concerned, since no other case is booked, we feel the addition should be limited to the actual quantity of suppression noticed, that is the unaccounted sales that passed through checkpost. Even though proportionate addition can be made to copra and oil which is attributable to the oil cake sold unaccounted, counsel for the petitioner pointed out that during the relevant year exemption was available for the purchases of coconut and copra by oil mill owners under Entry 4 of Third Schedule to SRO 1090/99. Since the department has no case that the coconut or copra during the year was purchased from outside the State we feel petitioner is entitled to exemption on the estimated

quantity of copra out of which unaccounted sales of coconut oil cake is taken. Therefore addition has to be only on account of sale of oil and oil cake and no purchase tax on copra should be levied for the proportionate quantity attributable to unaccounted sales.

ST Revision is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M.JOSEPH)
Judge